

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOSEPH L. BROWN,

Plaintiff,

v.

ZACK ROECKEMAN, *et al.*,

Defendants.

Case No. 3:10-cv-00179-JPG-PMF

MEMORANDUM & ORDER

This matter comes before the Court on Magistrate Judge Frazier's Report and Recommendation ("R & R") (Doc. 98) wherein it was recommended the Court deny plaintiff Joseph Brown's motion for default judgment (Doc. 51). After reviewing a magistrate judge's report and recommendation, the Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in the report. Fed. R. Civ. P. 72(b). The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.*

The Court must review *de novo* the portions of the report to which specific written objections are made. *Id.* "If no objection or only partial objection is made, the district court Judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). No party has filed an objection to the R&R and as such the Court reviews it for clear error. After reviewing the R&R, the Court finds it to be the correct result.

The entry of default had already been vacated as to Defendant Morris (Doc. 60) and he has answered the most recent amended complaint. As for Defendant Alberta Brown, the complaint which she did not respond to was filed pro se and was hand written, convoluted and

difficult to read. It also made unclear demands. Plaintiff Brown now has counsel who has filed an amended complaint which is clear and states the relief Plaintiff Brown is seeking. Defendant Brown will be given the opportunity to answer this complaint before default will be entered against her. Therefore, the original entry of default should be vacated and the Plaintiff shall re-attempt service with the amended complaint (found at Doc. 90).

For the foregoing reasons, the Court **ADOPTS** the R&R (Doc. 98) in its entirety and **DENIES** the plaintiff's motion for default judgment (Doc. 51). The Court also **VACATES** the entry of default as to Alberta Brown.

IT IS SO ORDERED.

DATED: January 30, 2012

s./ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE